

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**San Diego Gas & Electric Company,
Complainant**

Docket No. EL00-95-045

v.

**Sellers of Energy and Ancillary Service Into
Markets Operated by the California
Independent System Operator Corporation
and the California Power Exchange,
Respondents.**

**Investigation of Practices of the California
Independent System Operator and the
California Power Exchange**

Docket No. EL00-98-042

**ORDER ADOPTING JOINT NARRATIVE STIPULATION OF ISSUES and
CONCERNS WITH REGARD TO WHETHER CERTAIN ISSUES ARE BEYOND
THE SCOPE**

(Issued July 31, 2002)

1. On July 30, 2002, Mirant Americas Energy Marketing, L.P., and Mirant California LLC., on behalf of the active participants, filed a Joint Narrative Stipulation of Issues (JS) which addresses issues 2 and 3 to be adjudicated at the August hearing as framed by the direct and answering testimony and evidence filed by July 3 and other testimony filed by July 8, 2002 and the rebuttal testimony filed by July 26, 2002. In light of the rebuttal testimony filed on July 26, 2002, it is apparent that certain disagreements between the ISO and the participants reflected in the JS have been resolved. Every effort should be made to reduce those resolutions to trial stipulations as soon as possible and, accordingly, to refine the JS in these respects in the updated JS to be filed by August 12, 2002. In the circumstances, good cause is present to adopt the JS which shall govern adjudication of issues 2 and 3 until and unless modified by my rulings and/or future Orders.

2. The updated JS to be filed on August 12, 2002, shall include paragraph numbers in the form shown in this Order for each participant's statement of position on each stipulated issue.

3. Based upon my preliminary review of the pre-filed testimony and the JS, it is not entirely clear to me that the following matters are within the scope of issues 2 and 3 that have been set for hearing:

a. Stipulated issue I.A.2.K.ii., What is the appropriate treatment of neutrality charges in excess of the cap specified in the ISO's tariff? In this respect, I would like to understand more with regard to the complaint proceeding that is said to be addressing this matter and whether that proceeding, rather than these proceedings, are the appropriate venue for resolution of this issue. Reply testimony due by August 9, 2002 shall address this in greater detail.

b. Stipulated Issue I.C.1.concerning PX Default Chargebacks. The Commission's April 6, 2001 Order, 95 FERC ¶ 61,020 (2001), at pages 61,045-61,046 rescinded all prior chargebacks related to PG&E's and SCE's liabilities **and** deferred resolution of how the PX should account for the nonpayments to PG&E and SCE pending the resolution of certain state court complaint proceedings and directed the PX to file a status report following the resolution of either of the complaint proceedings. In these circumstances, it appears that this issue is beyond the scope of issues 2 and 3. The participants should consult in an effort to eliminate this issue in the updated JS.

c. Stipulated Issue I.1.C.2. concerning the cost of maintaining PX collateral. It is not clear to me that this cost is encompassed within the offsets permitted on the amounts encompassed by issues 2 and 3. The participants should consult in an effort to eliminate this issue in the updated JS.

d. Stipulated Issue I.2.B, How should refunds be applied as offsets against amounts owed and owing? The Commission's December 19, 2001 Order on Clarification and Rehearing, 97 FERC ¶ 61,275 (2001), at pages 62,223-62,224, found, "The July 25 Order does not specify the mechanism by which refunds should flow to customers. We will address this issue when, after reviewing the judge's findings of fact in the refund hearing, we issue an order addressing refunds." In these circumstances, it appears that this issue is beyond the scope of issues 2 and 3. The participants should consult in an effort to eliminate this issue in the updated JS.

e. Stipulated Issue I.2.C., How should the cash positions of parties in the ISO and PX markets (including cash held by the PX) be accounted for, if at all? What was stated in d. above appears to apply with equal force to this issue. The participants should consult in an effort to eliminate this issue in the updated JS.

f. Stipulated Issue I.2.G, How should any shortfalls in cash available for distribution be treated, if at all? What was stated in d. above appears to apply with equal force to this issue. The participants should consult in an effort to eliminate this issue in the updated JS.

g. Stipulated Issue II. H., When, under what circumstances, and subject to what conditions should cash flow between buyers and sellers? What was stated in d. above appears to apply with equal force to this issue. The participants should consult in an effort to eliminate this issue in the updated JS.

4. In the event that the participants can not informally agree on the resolution of the concerns under 3.b-g above, those matters will be ventilated at the oral argument scheduled for August 14, 2002.

Bruce L. Birchman
Presiding Administrative Law Judge